

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of )  
Shinje KIM et al. ) Group Art Unit: 1638  
Application No.: 10/577,433 ) Examiner: Unassigned  
Filed: April 27, 2006 ) Confirmation No.: 6802  
For: MOLECULAR MARKER )  
ASSOCIATED WITH CMV )  
RESISTANCE AND USE )  
THEREOF )

**RESPONSE TO NOTIFICATION OF DEFECTIVE RESPONSE**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The Notification of Defective Response dated December 11, 2009 (copy enclosed) requires submission of the surcharge for late submission of the oath or declaration. This Notification is in error.

A Notification of Missing Requirements dated February 9, 2007 was issued requiring submission of an oath or declaration of the inventors to allegedly complete the requirements for acceptance under 35 U.S.C. § 371 and the corresponding late submission surcharge. As Applicants fully explained in a Response filed on April 9, 2007, the Notification of Missing Requirements was in error since a Combined Declaration and Power of Attorney executed by the inventors was filed as part of the original application filing on April 27, 2006. A copy of the already filed Declaration, as well as a copy of the date-stamped postcard indicating that the above-identified executed Declaration was filed and received by the United States Patent and

Trademark Office on April 27, 2006 was submitted with the Response filed on April 9, 2007.

Now, over twenty months after Applicants submitted their Response indicating that the initial Notification was in error, a Notification of Defective Response was issued indicating that the surcharge for late submission of the executed Declaration is still required. However, since the executed Declaration was not submitted late, rather it was timely submitted as part of the original application on April 27, 2006, a late surcharge is not appropriate. Moreover, the Notification of Defective Response improperly indicates that the Declaration and Power of Attorney was filed on April 9, 2007. Again, the Combined Declaration and Power of Attorney document was filed on April 27, 2006.

In an attempt to finally resolve this issue without further expense and burden on Applicants, Applicants' representative contacted the PCT Help Desk on December 30, 2009 and was informed that both the Notification of Missing Requirements dated February 9, 2007 and the Notification of Defective Response dated December 11, 2009 were in fact both improper. Applicants' representative was also informed at that time that the Response to the Notification of Missing Requirements filed on April 9, 2007 would be treated as a Petition Under 37 C.F.R. § 1.181. Since the due date for responding to the Notification of Defective Response was set for January 11, 2009 and Applicants still did not receive any written documentation from the U.S. Patent and Trademark Office in this regard, Applicants' representative once again contacted the PCT Help Desk. On January 11, 2009, Applicants' representative was informed that this matter was turned over to Legal

Examiner Cynthia Kratz, on December 30, 2009, for review and processing of the Petition but a decision had not yet been issued.

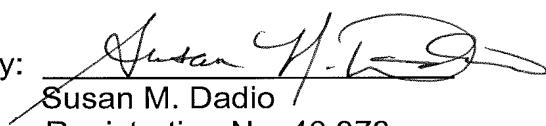
Even though the requirement for submission of the late surcharge is believed to be improper, Applicants' time period for responding to the Notice of Defective Response still runs -- today (January 11, 2010) being the final, non-extendable due date. Therefore, **Applicants hereby authorize the Director to charge the \$65 late surcharge, along with any appropriate fees that may be required by this paper, to Deposit Account No. 02-4800.** Applicants respectfully request that any decision holding that the Notification of Missing Requirements and Notification of Defective Response were in error, and thus according Applicants' the proper date of April 27, 2006 for satisfying the requirements under 35 U.S.C. § 371, also refund Applicants the improperly required \$65 fee corresponding to the late surcharge that is hereby being timely submitted.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: January 11, 2010

By:

  
Susan M. Dadio  
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# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
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U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/577,433 21839 BUCHANAN, INGERSOLL & ROONEY PC POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404	Shinje Kim	1012679-000120
		INTERNATIONAL APPLICATION NO.
		PCT/KR04/02732
I.A. FILING DATE		PRIORITY DATE
10/27/2004		10/27/2003

CONFIRMATION NO. 2079  
371 FORMALITIES LETTER



OC000000037799776

Date Mailed: 12/11/2009

## NOTIFICATION OF DEFECTIVE RESPONSE

The following items have been submitted by the applicant or the IB to the United States Patent and Trademark Office as a Designated Office (37 CFR 1.494):

- Indication of Small Entity Status
- Priority Document
- Copy of the International Application filed on 04/27/2006
- Copy of the International Search Report filed on 04/27/2006
- Copy of IPE Report filed on 04/27/2006
- Preliminary Amendments filed on 04/27/2006
- Information Disclosure Statements filed on 04/27/2006
- Biochemical Sequence Diskette filed on 04/27/2006
- Oath or Declaration filed on 04/09/2007
- Biochemical Sequence Listing filed on 04/27/2006
- Request for Immediate Examination filed on 04/27/2006
- U.S. Basic National Fees filed on 04/27/2006
- Assignment filed on 04/27/2006
- Priority Documents filed on 04/27/2006
- Power of Attorney filed on 04/09/2007
- Specification filed on 04/27/2006
- Claims filed on 04/27/2006
- Abstracts filed on 04/27/2006
- Drawings filed on 04/27/2006
- Paper nucleotide sequence listings filed on 04/27/2006
- Paper Computer Listings filed on 05/09/2006

Applicant's response filed 04/09/2007 is hereby acknowledged. The following requirements set forth in the NOTIFICATION of MISSING REQUIREMENTS mailed 02/09/2007 have not been completed.

The applicant needs to satisfy supplemental fees problems indicated below.

The following items **MUST** be furnished within the period set forth below in order to complete the requirements for acceptance under 35 U.S.C. 371:

- Surcharge (for late submission of filing fee, search fee, examination fee or oath or declaration) as set forth in 37 CFR 1.492(h) of \$65 was not received.

**SUMMARY OF FEES DUE:**

Total additional fees required for this application is **\$65** for a Small Entity:

- **\$65** Surcharge.

**Applicant is required to complete the response within a time limit of ONE MONTH from the date of this Notification or within the time remaining in the response set forth in the Notification of Missing Requirements, whichever is the longer. No extension of this time limit may be granted under 37 CFR 1.136, but the period for response set in the Notification of Missing Requirements may be extended under 37 CFR 1.136(a).**

Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

Registered users of EFS-Web may alternatively submit their reply to this notice via EFS-Web.

<https://sportal.uspto.gov/authenticate/AuthenticateUserLocalEPF.html>

For more information about EFS-Web please call the USPTO Electronic Business Center at **1-866-217-9197** or visit our website at <http://www.uspto.gov/ebc>.

**If you are not using EFS-Web to submit your reply, you must include a copy of this notice.**

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